IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 1ST JANUARY 2007 / 11TH PAUSHA 1928

Crl.Rev.Pet.No. 3944 of 2006(C)

CMP.4663/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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REVN. PETITIONER:

MUHAMMED KUTTY, S/O.ABOOBACKER,
AGED 45 YEARS, KOORIYATTA HOUSE,
MATTAYA DESOM, THRITHALA VILLAGE, OTTAPALAM
TALUK.

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.3944 of 2006

Dated this the 1st day of January, 2007

O R D E R

Revision petitioner challenges the order of dismissal of a complaint under Section 203 of the Code of Criminal Procedure.

2. Revision petitioner filed a complaint alleging offence under Section 138 of the Negotiable Instruments Act ('the Act', for short). He made an allegation that the accused purchased two vehicles for an amount of Rs.6 lakhs as per an agreement dated 21.4.2006. As sale consideration the accused issued a cheque to the complainant. It was dishonoured, on presentation and thereafter complying with the legal formalities, a complaint was filed alleging offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate, after accepting an affidavit in lieu of sworn statement and on considering the complaint and the sworn statement of the complainant and the documents produced, entered a finding that there is another remedy available to the complainant. It was held that there is no averment whether the vehicle was repossessed or not.

3. According to lower court, since the agreement itself contained remedy for the complainant, that is repossession of the vehicle and realisation of loss and damages, it cannot be termed that the cheque was issued by the respondent to discharge a legally enforceable debt. The court found that materials produced by the complainant are not sufficient to make out a prima facie case and there is no sufficient ground to proceed against the accused for offence under Section 138 of the Negotiable Instruments Act.

4. A reading of the complaint shows that there are averments to the effect that there was agreement to purchase two vehicles and Rs.6 lakhs

was fixed as the sale consideration and an agreement was executed between the parties. Thereafter towards the sale consideration, the accused has drawn a cheque for Rs.6 lakhs and handed over the same to the complainant. It is also alleged in paragraph 4 of the complaint that Rs.6 lakhs was due to the complainant from the accused as a debt and the cheque issued by the complainant was dishonoured and he has not paid the amount. Other averments are also made in the complaint as well as in the affidavit disclosing an offence under Section 138 of the Negotiable Instruments Act. Since the averments in the affidavit (sworn statement) of the complainant and the documents produced disclose the offence under Section 138 of the Act, it cannot be said that there is no sufficient ground to proceed against the accused.

5. When the allegations in the complaint and the sworn statement make out the ingredients of offence under Section 138 of the Act, the court is bound to proceed against the accused. The disclosure of an offence as per the allegations in the complaint and the sworn statement is a ground for proceeding against the accused and hence it cannot be said that there was no sufficient ground to proceed against the accused in this case. The meticulous analysis of the evidence, the consequences of breach of the terms of agreement etc. cannot be made a ground at this stage hold that there is no sufficient ground to proceed against the accused. Such a detailed appreciation of evidence and analysis of the materials are not contemplated at this stage. The question whether the complainant has another remedy by repossessing the vehicle also is not a ground to dismiss the complaint, especially since as per the impugned order itself, the complainant is silent about the repossession of the vehicle.

6. The question of repossession, the consequences of the breach of terms and conditions of the agreement etc. are not matters to be looked into so meticulously as done in this case at the stage of deciding whether there are sufficient materials to proceed against the accused. The Magistrate has gone wrong in going into the details of the agreement, the absence of averments regarding the repossession etc. to come to a

conclusion that there are other remedies and to hold that there is no ground to proceed against the accused. The order under challenge is unsustainable and it is set aside.

7. The learned Magistrate is directed to take the case on file and proceed in accordance with law. The parties shall appear before the trial court on 7.2.2007.

The Criminal Revision petition is allowed.

K.HEMA, JUDGE

vgs.